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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 922

ALBERT R. HANKINS,
Petitioner,

vs.

STATE OF TENNESSEE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

I

QUESTION PRESENTED

The question presented is whether or not a state law which requires a motorcycle to be equipped with crash bars violates the due process and equal protection rights guaranteed by the United States Constitution.

II

ARGUMENT

It Is Not a Denial of Due Process and Equal Protection Rights for a State to Pass Laws Requiring That a Motorcycle Be Equipped With Crash Bars.

The statute under which Petitioner was convicted and fined the sum of Ten Dollars ($10.00) provided that "all motorcycles and motor driven cycles operated upon any highway or public road in this State shall be equipped with crash bars approved by the commissioner of safety . . ." **Tennessee Code Annotated 59-933.** The 1970 amendment referred to by Petitioner merely excludes small motorcycles when the operator is twenty-one years of age or older.

There have been many cases in which the highest courts of a state have held that it was a valid exercise of the police power for the state to require motorcyclists and their passengers to wear protective helmets. These cases have been supported on the theory that without helmets motorcyclists were vulnerable to being struck in the head by loose stones which may cause injury or distraction to the operator resulting in loss of his control of the motorcycle, thereby endangering other users of the public highways. Alternatively, decisions have justified motorcycle helmet regulation on the ground that the state has an interest in maintaining healthy citizens capable of self-support and that it lies within the power of the legislature to adopt reasonable measures for the promotion of safety upon the public ways. In support of his position, Petitioner cites a case decided by a Michigan appellate court.[1] This is decidedly the minority view.[2]

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[1] **American Motorcycle Ass'n v. Davids**, 11 Mich. App. 351, 158 N. W. 2d 72 (1968).

[2] The cases are collected in an annotation entitled "Validity of Traffic Regulations Requiring Motorcyclists to Wear Protective Headgear". 32 A. L. R. 3d 1270 (1970).

The State admits that the crash bar provision is purely for the safety of the motorcycle operator and his passengers. In **People v. Newhouse**, 55 Misc. 2d 1064, 287 N. Y. S. 2d 713 (1968), the New York court, upholding the validity of a helmet regulation, denied a motorcyclist's motion to dismiss on constitutional grounds a prosecution for failure to comply with the regulation. The court considered the enactment of legislation requiring the use of helmets to be a reasonable exercise of the police power. The prevention of critical head injuries and the possible thrusting of those so injured as a burden upon society was said to be a sufficient reason in and of itself.

In **People v. Carmichael**, 56 Misc. 2d 388, 288 N. Y. S. 2d 931 (1968), the New York court reversed a judgment dismissing an information and upheld the constitutionality of a motorcycle helmet regulation notwithstanding defendant's arguments that the statute was unconstitutionally vague, amounted to an improper delegation of legislative powers, encompassed an invalid exercise of police power by the state, was discriminatory so as to deny the defendant equal protection of the laws, was an unreasonable burden on interstate commerce, and contemplated an infringement on the defendant's right of privacy. Recognizing a rapid increase in the number of accidents involving motorcycles, the court stated that, viewed from the standpoint that it is to the interest of the state to have strong, robust, healthy citizens, capable of self-support, of bearing arms, and of adding to the resources of the country, it was apparent that the challenged legislation requiring the wearing of a protective helmet for self-protection was a valid purpose of legislative action under the police power of the state.

The State relies upon the reasoning which supports the decision of the Wisconsin court in **Bisenius v. Karns**, 42 Wis. 2d 42, 165 N. W. 2d 377 (1969), **appeal dismissed** 395

U. S. 709. The court stated that protection of the safety of all users of the highway even against the consequences of their own actions is a legitimate use of the police powers of the state. There is in the law no sanction for self-destruction, said the court, and certainly there is no right on the part of anyone to use public highways for risking, courting or seeking self-destruction. The court noted that if it is deemed invariably fatal to such a statute that it seeks only to protect persons against their own actions, a considerable number of statutes would become suspect, including laws requiring hunters to wear brightly colored jackets, prohibiting riders upon motor-driven cycles from attaching same to any other vehicle upon a highway, prohibiting persons other than employees from riding upon any part of a vehicle not designed for use of passengers, requiring boats to be equipped with life preservers, prohibiting aerial performances without a net, requiring persons to wear life preservers while riding on water skis, and requiring tunnel workers to wear protective helmets, and other types of industrial employees to wear protective goggles. The court said it is enough to observe that the concept that it is my neck and I have a right to risk it when and where I please has had some limitations placed upon its application.

The economic cost to the public at large from accidents in which motorcycles were involved has been said in some cases to be a reason for sustaining motorcycle helmet regulations. In **State v. Anderson**, 3 N. C. App. 124, 164 S. E. 2d 48, **aff'd** 275 N. C. 168, 166 S. E. 2d 49 (1968), the court, affirming a conviction for violation of a statute requiring motorcycle operators and their passengers to wear approved safety helmets, stated, *inter alia*, that in North Carolina, by reason of the Motor Vehicle Safety and Financial Responsibility Act, most operators of motor vehicles in the state are required to carry motor vehicle

liability insurance at a heavy annual premium cost. Said the court, any statute which can reasonably be expected to reduce that premium cost necessarily affects the welfare of the public at large. Reducing the number of deaths and the severity of injuries to riders of motorcycles on the streets and highways of the state, and the consequent reduction in liability premium costs, do therefore, explained the court, affect not alone that limited class of persons who ride motorcycles, but also directly and beneficially affect all operators of motor vehicles in the state.

In **State v. Odegaard**, 165 N. W. 2d 677 (N. D. 1969), upholding a motorcycle helmet regulation, it was recognized that the legislature may take reasonable measures to prevent persons from becoming public charges, often the result of the costs of long hospitalization in brain injury cases.

The court in **State ex rel. Colvin v. Lombardi**, 241 A. 2d 625 (R. I. 1968), said that it was not persuaded that the legislature was powerless to prohibit individuals from pursuing conduct which could result in their becoming public charges.

The State avers that for the reasons set out by the highest courts of many states quoted *supra* that a statute requiring a motorcycle to be equipped with crash bars is a lawful exercise of the legislative power of a state.

III

CONCLUSION

The Petition should be denied.

Respectfully submitted

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